1. Human rights in the context of globalization

1. Since 1952, the International Commission of Jurists (ICJ) has promoted the understanding and observance of the rule of law and the legal protection of human rights. Very early on, ICJ adopted a dynamic approach to the concept of the rule of law and it has always paid particular attention to social, economic and cultural rights as fully-fledged rights and to the rule of law as a factor of development. At their Triennial Meeting held in Cape Town, South Africa, in July 1998, the members of ICJ discussed the impact of globalization on human rights and the rule of law. Their conclusions are reflected below. They also adopted the "Cape Town Commitment" on the rule of law in a changing world.

2. ICJ calls upon the Commission on Human Rights to pay particular attention to the effects of globalization on human rights, in particular on the extent to which, in the context of this phenomenom, economic and social rights are respected or, on the contrary, violated. Indeed, the growing interdependence of peoples and national economies through the exchange of goods, services, capital, information and persons, the current liberalization and privatization policies, the resulting weakening of the regulatory capacity of States - which are traditionally expected to protect human rights - and the growing impact of the behaviour of global economic actors on the enjoyment of human rights by people in all parts of the world, have created a new context which could render some of the traditional mechanisms for the protection of human rights irrelevant.

2. The need for an optional protocol to the International Covenant on Economic, Social and Cultural Rights providing for a system of individual complaints

3. In the context of globalization, economic, social and cultural rights have to be understood, more than ever, as an indivisible part of human rights and must be implemented as such. The adoption of an optional protocol to the International Covenant on Economic, Social and Cultural Rights providing for a system of individual complaints would be a crucial step in this direction. Through the examination of individual cases, this system would permit the development of a significant body of jurisprudence, which is absolutely indispensable if economic, social and cultural rights are ever to be taken seriously.

4. The 1993 World Conference on Human Rights supported the idea of an optional protocol. Notwithstanding this fact and although most controversial issues have already been discussed and resolved, progress towards the adoption of the protocol is slow and difficult. In order to stimulate this process and to ensure that progress is made during the fifty-fifth session of the Commission on Human Rights, ICJ plans to organize in February 1999 a half-day meeting for representatives of the Permanent Missions to the United Nations on the draft optional protocol.

5. ICJ cannot agree with the opinion that an optional protocol would only be acceptable once the State obligations arising from economic, social and cultural rights are defined more precisely. First, this objection

reintroduces the old preconceived idea that economic and social rights are not - yet - rights, but only objectives to be achieved. Second, criteria and benchmarks permitting the justiciability of those rights have already been presented in different intergovernmental and non-governmental forums, including by ICJ. Third, experience in the field of civil and political rights shows that the precise content of State obligations can be clarified only through the jurisprudence of a body applying an international instrument to individual cases.

3. Direct application of the rule of law to global economic actors

6. Under traditional legal concepts, the rule of law and human rights can only be protected, strengthened and developed by States and inter-State mechanisms, through national and international regulations. In response to economic globalization, the Commission on Human Rights should indeed strive to reinforce such regulations in order to counterbalance the strength of global economic actors. Pending the important normative and institutional developments necessary to achieve this aim, some important phenomena affecting people's daily lives may increasingly fall outside the scope of the rule of law. Therefore, it is equally important to explore how the rule of law and human rights - or at least the values which they convey - can be directly applied also to and by transnational corporations. Particular attention should be paid to analysing:

Which human rights and which aspects of the rule of law can be applied - through which concepts and mechanisms - directly to and by transnational corporations, and which of them necessarily require State intervention;

Whether and how existing human rights standards must be reformulated to apply directly to global economic actors.

7. In line with its "Cape Town Commitment", ICJ plans to convene an interdisciplinary workshop, including representatives of transnational corporations, to discuss these issues. The results of this workshop may be of particular interest for the sessional working group on the effects on human rights of the activities and working methods of transnational corporations, to be set up under resolution 1998/8 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

4. Implication of privatization and deregulation policies for the rule of law

8. Either in the framework of structural adjustment policies recommended by international financial institutions, or to obtain a situational advantage in global competition, several countries have decreased and streamlined regulations affecting the business community and privatized enterprises and services that were formerly in the public domain.

9. Deregulation often leads to the cancelling or weakening of legislation implementing and protecting economic, social and cultural rights. Privatized activities are no longer subject to the comprehensive principles of the rule

of law and human rights applicable to State behaviour, but only to looser principles applicable to private activities. It is, therefore, important to determine:

Which State activities cannot be privatized from the point of view of the rule of law;

Which aspects of the rule of law and of human rights should continue to apply to privatized activities and what mechanisms and rules of private and administrative law must ensure such horizontal direct effect;

Which regulations are necessary to implement international obligations under human rights treaties; which ones can be replaced by market mechanisms; and which ones constitute obstacles to the rule of law and the full enjoyment of human rights.

10. The social forum suggested in resolution 1998/14 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities could certainly play an important role in carrying out such an assessment. ICJ appeals to the Commission on Human Rights to authorize the establishment of this forum, which will permit a dialogue on a crucial subject between States, competent intergovernmental organizations, transnational corporations and NGOs.

11. In line with its "Cape Town Commitment", ICJ intends to contribute to the assessment of the elements mentioned above by organizing two missions to be conducted by multidisciplinary teams in two countries which have recently adopted privatization and deregulation policies - one in a developing country and the other in a post-socialist country in transition. The aim of these missions is to assess privatization and deregulation policies in those countries; their consequences for the rule of law and the effective enjoyment of human rights; and the measures taken to protect human rights in the new context. ICJ will publish the results of those missions and make recommendations to the authorities concerned, the private actors involved, international financial institutions and donor States. Based upon the results of these missions, ICJ also plans to organize an interdisciplinary workshop to draw general conclusions, which should assist the discussions on globalization of the social forum mentioned above.

5. Working with the World Trade Organization (WTO)

12. Experience in promoting and protecting human rights through intergovernmental mechanisms shows that NGOs have a crucial expert and lobbying role to play in the elaboration and implementation of new standards and mechanisms. The efficient performance of this role is greatly facilitated by formal observer status. WTO elaborates and implements global standards permitting the free flow of goods and capital, which have an impact on human rights. WTO regulations, however, do not provide any observer status for NGOs.

13. The Commission on Human Rights and States should therefore call for such an increased role of NGOs in WTO legislative activities and its adjudicatory process, in order to enable them to monitor these activities from the

perspective of the rule of law. Whilst implementing its "Cape Town Commitment", ICJ plans to lobby for this purpose, together with other human rights, environmental and development NGOs.

6. Human rights and trade, investment and financial policies

14. ICJ awaits with interest the working paper on "the ways and means by which the primacy of human rights norms and standards could be better reflected in, and could better inform, international and regional trade, investment and financial policies, agreements and practices", which the Sub-Commission on Prevention of Discrimination and Protection of Minorities entrusted two of its expert members with preparing in 1998.

15. Trade, investment and financial agreements and policies are adopted by the very same States which adopt human rights treaties and are bound by them. States also decide upon the policies of international trade and financial institutions. In this field also, States have to ensure that their policies do not violate or hamper human rights, in particular economic, social and cultural rights, but rather respect them, protect them and facilitate their exercise.

16. Similarly, the relevant international organizations themselves have to be concerned by the human rights impact of their policies and decisions. In a time of globalization, no government department and no specialized organization can claim not to have a mandate in the field of human rights.